

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PHAT FASHIONS, LLC,

Plaintiff,

-against-

TORNADO IMPORTS (CANADA), INC.,

Defendant.
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Case No.: 1:07 CV 03278 (PAC)

**FURTHER
DECLARATION OF
BARRY SEGAL**

BARRY SEGAL, pursuant to 28 U.S.C. §1746, declares under penalty of perjury as follows:

1. I am the Vice President-Finance for defendant and for the other companies that comprise the "Tyfoon Group," as discussed in more detail in my initial declaration. I provide this additional Declaration to answer some questions raised by counsel for Phat Fashions (Mr. Hoffman) and to respond to his claims that the loss of the Phat Fashions lines, the bulk of our business, somehow does not put our companies in a deep financial crisis. The charts that I have attached are compiled from the financial books and record of Tornado, Vis-à-Vis, and the other Tyfoon Group companies which are prepared and maintained under my supervision.

2. Exhibit 1 simply lists, by fiscal year (our fiscal year ends September 30th) the gross sales of Phat-label merchandise by our wholesale operations. This includes goods sold by our wholesale operations to our four stores, but not goods then sold by the stores, which would be a double count. From that you can see, both for Phat Farm and for Babt Phat products, how sales built up over time from initially fairly low levels. You can also see how sales of Phat Farm products have stumbled in recent

years; as Issie explained in his Declaration, there have been substantial problems with the mens (Phat Farm) lines in recent years, which we know Phat Fashions has been working very hard to correct. This has meant, in part, that our sales on the ladies (Baby Phat) side have become essential to the profitability of the Phat-label license that we have had.

3. In my prior Declaration I explained that certain of our Baby Phat merchandise was obtained under license from BP Clothing rather than under our Phat Fashions license, but that our other sales of Baby Phat lines were still very substantial. At Exhibit 2 is a chart we have prepared listing all the different major categories of Phat Farm and Baby Phat merchandise we have carried over the years. This list can be compared to the "Schedule C" from our original License, which is also included at Exhibit 2. Schedule C is formally limited to Phat Farm products (Baby Phat did not exist when the License was started), and you can see that we carry, and have carried, many lines which are Baby Phat rather than Phat Farm and quite a few lines that are also directly excluded by the terms of Schedule C. This was all related to the series of oral agreements that Issie described in his Declaration.

4. The chart at Exhibit 2 also makes clear that we sold a wide range of Baby Phat merchandise that was under direct license in addition to the BP Clothing lines of "junior" apparel.

5. Exhibit 3 contains charts showing the percentage of the Tyfoon Group's total sales that were generated by Tornado and Vis-à-Vis, first with, and then excluding, BP Clothing goods. You can see, for example that Vis-à-Vis sold over \$8.6 million of Baby Phat Product in both 2006 and 2007 exclusive of BP Clothing merchandise, and that even if you put BP Clothing merchandise aside (since we no longer

carry it), over the last three years Phat Fashions labels still accounted for 52-59% of our business (combining Tornado and Vis-à-Vis).

6. This is perhaps the place to re-emphasize that the reason Baby Phat products have been carried in a separate company is the Phat Fashions told us that was acceptable. Baby Phat and Phat Farm are both still part of our licensed business, and we could have – and could now – carry all Phat-label goods with in Tornado, if Phat Fashions preferred. To suggest that because the Baby Phat goods are in a Vis-à-Vis they somehow don't count as part of our Phat Fashions license business makes no sense at all.

7. Exhibit 4 shows the gross margins, pre-tax earnings and other P&L information for Tornado and Vis-à-Vis for the last two fiscal years (we are just completing the financial statements for fiscal 2007 for the Tyfoon Group now, but the 2007 figures I have reported here appear to be about final). As you can see, Tornado and Vis-à-Vis each were very profitable companies as a result of the volume of business we had built over time and the reputation that the Phat-label brands now enjoy in our markets, generating substantial sums for bonuses to senior management as well as net earnings to support dividends to shareholders. This volume and reputation, which we built in this market, is what plaintiff has taken away from us and handed to another company.

8. It is the case that losing the BP Clothing lines of junior apparel has itself hurt our sales and our bottom line, but this simply means that our ability to market the remainder – the bulk – of the Phat-label lines, the ones we are entitled to sell under our direct license with Phat Fashions, is more critical to our financial security. In fiscal 2007 we only had the BP Clothing lines for half the year. You can see by comparing the

two pages of the charts at Exhibit 3 and doing some subtraction that BP Clothing sales for Vis-à-Vis were about \$1,557,000 in fiscal 2007, compared to about \$2,832,000 in fiscal 2006, a drop of about \$1,275,000. At the same time, you can see from the second page of Exhibit 3 that our fiscal 2007 Vis-à-Vis sales of all other Baby Phat products were down less than 5% on comparison to the prior year, by far the best year ever for our Baby Phat lines. As a result, our Gross Margin in the year we phased out BP Clothing's products was down only about \$886,000 and our "Net Available" was down even less (comparing the two pages of Exhibit 4). Thus, even without BP Clothing's junior apparel Vis-à-Vis remained a strong company, capable of returning a critical "bottom line" contribution to the Tyfoon Group with its continued sale of Phat-label merchandise.

9. We are trying very hard to locate new lines to fill the void now left by the loss of our direct-license Phat-label products on both the mens and ladies sides, but this will takes years – if ever – and in the meantime to stay in business we will have to survive substantial and annual losses, if we can. We have added quite a number of new lines, as Mr. Hoffman points out, but whether any of these will result in substantial sales volume – and when – remains to be seen. Issie is entitled to be the optimist, but I have to manage the cash flow. I am able to say that even with the addition of new lines based on bookings to date the sales I project for the first part of 2008 are only about 45% of what we had booked at this point last year. As nearly as I can estimate it, we had over \$5.3 million in Phat-label sales booked at this point last year in addition to committed sales for other lines; even with the addition of a number of new lines, it appears to me we have lost about \$4.7 of that \$5.3 million in sales volume.

10. Sales for some of our lines have improved, but others are suffering very badly. In my first Declaration I offered the example of the terrible drop in our footwear sales -- \$3,000,000 in the first half of 2007 but only \$600,000 projected for the first half of 2008. Having had some more time to research this I can add some more numbers: In Men's Clothing, where we have long had some lines besides Phat Farm, our projected sales are still collapsing: We project \$ 975,000 in the first six months of 2008 versus \$2,155,000 in those months in 2007. In Ladies accessories we expect only about \$190,000 in sales where we had over \$1,500,000 in those months in 2007.

11. Mr. Hoffman seems to confuse hopes with achievement. Thus he mentions that our agreement with Coogi, which started earlier this year, called for \$4,000,000 as minimum sales for the period from inception to the end of September 2008. The fact is that we won't get anywhere near that, and we've already told them so. We've had Coogi lines for half of 2007, but our total sales have been less than \$565,000 to date. We project that additional sales of Coogi's lines, given market reception so far, will be less than a further \$1,000,000 to the end of September 2008. This approximately \$1.6 million is a far, far cry from the \$4,000,000 target, and proves the points that Issie made in his Declaration: (i) it can take years to build up market recognition and demand for product lines and (ii) in the early years of carrying a line and introducing it to the market there may be little or no profit to it.

12. I have done an in-depth analysis of our overhead costs as these are likely to carry forward without Phat Fashions business. We report expenses by first separating expenses that are directly attributable to one of the companies (like Phat Farm merchandise selling expense, or an allocated percentage of management time) and

booking it directly to that company (e.g., to Tornado). There are then “group” expenses (corporate showroom and offices, shipping facility, etc.) which are allocated among the selling companies based on their relative sales.

13. My conclusion is that after eliminating variable sales expense and adjusting staffing costs, over the next 12 months there will be approximately \$2.5-plus million of what had been recorded as Tornado and Vis-à-Vis overhead that would remain (primarily base salaries of key employees and a share of the corporate overhead), previously but no longer supported by Phat Fashions revenue. We can reduce that by about \$228,000 with the proceeds of selling off the last of our Phat-label inventory, but for the rest, about \$2.3 million, this is money we have to spend to keep our operation intact while we look for new business.

14. Our four retail stores basically sell the brands we distribute at wholesale, to “showcase” our brands in a retail setting. We account for them on a break-even basis, roughly, but they actually achieve this result only by receiving substantial subsidies from our wholesaling entities. Exhibit 5 provides the calculation for the last eight months of our most recent fiscal year. It can be seen that between them Tornado and Vis-à-Vis covered about \$490,000 of the operation shortfall in the stores for those months. We considered these subsidies sound business, as part of building the market visibility of the brands we sold at wholesale -- that’s why we agreed to open a Phat Farm store in the first place. Exhibit 5 also contains a chart showing the percentage of sales at the stores that were Phat-licensed products.

15. Going forward our stores no longer have Phat-label merchandise to sell, at a margin, and they also no longer have the subsidy from Tornado and Vis-à-Vis

available to them. For this reason, I estimate that our stores will suffer a cash loss in 2008 of at least \$400,000 even after continuing the “retail support” that they have gotten from our other brands before we either reposition the stores (which frankly, I don’t think we can do) or close them (which is what I think we’ll have to do by summer 2008). This estimate does not include closing costs. The closing of these stores that served to “showcase” our principal brands is something we cannot reverse, and damage to our reputation will no doubt follow from it.

16. If you look again at Exhibit 4, you can see that without the Phat-label net earnings but with the retention of overhead costs as I have just outlined (\$2.3 million plus \$400,000), the Group’s net earnings for 2006 or 2007 would have been turned into losses of \$1,000,000 the first year and about \$2,000,000 in 2007. That is just an illustration, but I have also tried to do a budget for calendar 2008, when we will no longer have the Phat-label lines (except for closing out old inventory). Even assuming both some significant new revenue and some substantial cost-cutting I am projecting a loss for the Group of over \$2,000,000 – and even that is on the assumption that we will be succeed in reducing the cost of our corporate facility by renting out part of our warehouse and shipping areas.

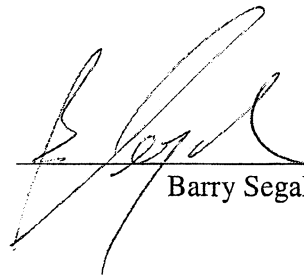
17. Yes we have tried to bring in new lines, but showing and selling are very different. We are in a deepening hole with years of losses in front of us.

18. Is our business future at risk? Well certainly Tornado’s business (whether you look at it alone or in combination with Vis-à-Vis) is being destroyed right now, and in my view our stores are destined to close. But even if you look at the entire family of companies, the answer is yes, we are at very serious risk of losing what we

have built over the last 20-plus years. We have the financial resources to survive the collapse of our spring 2008 “season,” now pretty much a fait accompli. But starting in February we would be showing and marketing merchandise for the fall 2008 season. If we can regain the Phat-label business within the next 30 days, crash back into marketing those lines for the next business cycle, and restore that portion of our sales volume, we may be able to avoid falling into a deep financial loss. But without the Phat-label lines to sell for the rest of the calendar year, the loss will be as I have projected, the company will run out of cash in that “fall” season, and I believe the group will either have to incur bank debt, which will only increase the cost pressures, or shift into “wind down” mode, in which we shrink the business, lay off a number of currently key employees, and eliminate our corporate facility. I would not say that the entire business group faces total extinction, unlike Tornado and Vis-à-Vis. But it is fair to say that if we do not regain the Phat Fashions lines very soon and no miracle arrives from sources unknown – and it surely won’t be from Coogi sales, no matter what Mr. Hoffman thinks – then what we have achieved over the last two decades will be effectively destroyed. Yes, there will be some way to go on, but the businesses that Issie has spent his life building, that his son Josh has committed his own career to, and that I myself have been part of for over 20 years will no longer exist.

19. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 11, 2007



Barry Segal